SUPREME COURT, U. S.

FILED

JAN 26 1970

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1121

CITY OF NEW YORK, *Appellant*,

v.

UNITED STATES OF AMERICA, AUTOMOBILE MANUFACTURERS ASSOCIATION, INC., GENERAL MOTORS CORPORATION, FORD MOTOR COMPANY, CHRYSLER CORPORATION, and AMERICAN MOTORS CORPORATION, *Appellees*.

On Appeal From the United States District Court for the Central District of California

JURISDICTIONAL STATEMENT

J. LEE RANKIN
Corporation Counsel

NORMAN REDLICH
First Assistant Corporation Counsel

JOHN R. THOMPSON
Assistant Corporation Counsel
City of New York
Municipal Building
New York, New York 10007

DAVID I. SHAPIRO
FRANK F. FLEGAL
Federal Bar Building West
Washington, D. C. 20006
Attorneys for Appellant

DICKSTEIN, SHAPIRO & GALLIGAN
Federal Bar Building West
Washington, D. C. 20006
Of Counsel

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement	3
The Questions Are Substantial	6
Conclusion	7
Appendix A—Opinions of the District Court	
A. Oral Opinion, October 28, 1969	1a
B. Memorandum Opinion, November 7, 1969	9a
Appendix B—Statutes Involved	15a
Appendix C—Complaint	17a

TABLE OF AUTHORITIES

CASES:

Cascade Natural Gas Corporation v. *El Paso Natural Gas Company*, 386 U.S. 129	2
Chrysler Corp. v. *United States*, 316 U.S. 556	7
City of New York v. *United States*, 390 U.S. 715	7
Sam Fox Publishing Company v. *United States*, 366 U.S. 683	2, 12
Thrifty Shoppers Script Co. v. *United States*, 389 U.S. 580	7
United States v. *Allied Chemical Corp.*, 1961 Trade Cas. ¶ 69,835 (D. Mass.)	5
United States v. *Bituminous Concrete Assoc.*, 1961 Trade Cas. ¶ 69,878 (D. Mass.)	5
United States v. *Brunswick-Balke-Collender Co.*, 203 F. Supp. 657 (E.D. Wisc.)	9
United States v. *Carter Products, Inc.*, 211 F. Supp. 144 (S.D.N.Y.)	7, 10

Page

United States v. *Lake Asphalt & Petroleum Co. of Mass.*, 1960 Trade Cas. ¶ 69,835 (D. Mass.) 5
United States v. *Radio Corp. of America*, 46 F. Supp. 654 (D. Del.), *appeal dismissed*, 318 U.S. 796 7
United States v. *Standard Oil Co.*, 1959 Trade Cas. ¶ 75,522 (S.D. Calif.) 10
United States v. *Standard Ultramarine & Color Co.*, 137 F. Supp. 166 (S.D.N.Y.) 10
United States v. *Swift & Co.*, 286 U.S. 106 7
United States v. *Ward Baking Co.*, 376 U.S. 327 ..6, 7, 8, 9
Utah Public Service Comm. v. *El Paso Natural Gas Corp.*, 395 U.S. 464 7

STATUTES:

15 U.S.C. § 1 ..... 3, 7
15 U.S.C. § 16(a) 2, 3, 8
15 U.S.C. § 29 2
Rule 24, F.R.C.P. 3

MISCELLANEOUS:

The Government and the Private Antitrust Suit, Department of Justice Release, December 11, 1969 .. 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No.

CITY OF NEW YORK, *Appellant*,

v.

UNITED STATES OF AMERICA, AUTOMOBILE MANUFACTURERS ASSOCIATION, INC., GENERAL MOTORS CORPORATION, FORD MOTOR COMPANY, CHRYSLER CORPORATION, and AMERICAN MOTORS CORPORATION, *Appellees*.

On Appeal From the United States District Court for the Central District of California

---

JURISDICTIONAL STATEMENT

Appellant, the City of New York, appeals from two final orders which denied the City's pre- and post-judgment applications to intervene and from the consent judgment approved by the United States District Court for the Central District of California.

OPINIONS BELOW

The district court's oral opinion of October 28, 1969, and its memorandum opinion subsequently filed on November 7, 1969 have not been officially reported. These opinions are set forth in Appendix A, *infra*, pp. 1a-15a.

JURISDICTION

On January 10, 1969, the United States instituted this civil antitrust action against the defendants pursuant to 15 U.S.C. § 4. The City of New York, by appropriate applications, sought leave to intervene both before and after the district court's approval on October 28, 1969 of a consent judgment submitted by the parties. By orders entered on October 28, 1969 and December 16, 1969, the district court denied the City's intervention applications. On December 22, 1969, the City filed a notice of appeal in the United States District Court for the Central District of California. This Court has appellate jurisdiction by virtue of 15 U.S.C. § 29. See *Cascade Natural Gas Corporation* v. *El Paso Natural Gas Company*, 386 U.S. 129, 131; *Sam Fox Publishing Company* v. *United States*, 366 U.S. 683.

QUESTIONS PRESENTED

1. Does an antitrust defendant have a right to entry of a consent decree lacking *prima facie* effect pursuant to Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), so long as it consents to all of the Government's demands for relief except the demand for an adjudication that it violated the antitrust laws?

2. If not, may a district court approve a consent decree lacking in *prima facie* effect over the opposition of responsible public bodies without requiring the decree's proponents to furnish a record sufficient to per-

mit the court to make an independent, judicial determination that entry of the decree is in the public interest?

3. Where a responsible public body seeks intervention in an antitrust case alleging an interest in the subject matter and contending that the United States has not adequately represented its interest because of its decision to present a consent decree lacking *prima facie* effect without providing the district court with a record sufficient to establish that the decree is in the public interest, is that public body entitled to intervene either before or after entry of the consent judgment?

STATUTES INVOLVED

Section 5(a) of the Clayton Act, 15 U.S.C. § 16, and Rule 24 of the Federal Rules of Civil Procedure are set forth in Appendix B, *infra*, pp. 15a-16a.

STATEMENT

On January 10, 1969, the United States instituted this civil antitrust action charging the Automobile Manufacturers Association, the major automobile manufacturers and a number of alleged co-conspirators, with combining and conspiring in unreasonable restraint of interstate trade and commerce in motor vehicle air pollution control equipment in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.[1] The

[1] In January 1965, the Department of Justice instituted a civil investigation to explore charges that the automobile industry had violated the antitrust laws by conspiring and agreeing to delay the development and installation of motor vehicle emission control devices. In July 1966, a federal grand jury was convened to pursue this investigation and after eighteen months, during which a number of witnesses were examined and thousands of documents inspected, the grand jury was discharged without returning an indictment.